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## DIGEST

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Ellington

HB No. 1464

**Abstract:** Provides for the repurchase of marine products.

Present law (R.S. 32:1268.1(B)) provides for mandatory manufacture repurchase on marine products when a marine dealer ceases to sell that product.

Proposed law repeals present law.

Proposed law (R.S. 32:1268.3) provides that if any marine dealer enters into a franchise with a manufacturer, distributor, or wholesaler wherein the marine dealer agrees to maintain an inventory of marine products or repair parts, the manufacturer, distributor, or wholesaler shall not terminate such franchise unless there is a breach of the franchise by the marine dealer and until 90 days after notice of such intention to terminate, including breach of the franchise, has been sent by certified mail, return receipt requested, or commercial delivery service with verification of receipt, to the marine dealer and the marine dealer has failed to correct the breach within such period.

Proposed law provides that if the franchise is terminated as a result of any action by the manufacturer, distributor, or wholesaler and the marine dealer is not in breach of the franchise, the manufacturer, distributor, or wholesaler shall repurchase the inventory as provided in proposed law. The marine dealer may keep the inventory if he desires, but may not sell such inventory to an ultimate purchaser after termination of the agreement. If the marine dealer has any outstanding debts to the manufacturer, distributor, or wholesaler, the repurchase amount may be credited to the marine dealer's account.

Proposed law provides that if the franchise is terminated as a result of any action by the marine dealer and the manufacturer, distributor, or wholesaler is not in breach of such agreement, the manufacturer, distributor, or wholesaler shall not be required to repurchase the inventory; however, if the franchise is terminated as a result of any action by the marine dealer and the manufacturer, distributor, or wholesaler is in breach of the franchise, the manufacturer, distributor, or wholesaler shall be required to repurchase the inventory.

Proposed law provides that it shall be unlawful for the manufacturer, wholesaler, or distributor, without due cause and pursuant to its own initiating action, to terminate or fail to renew a franchise, unless the manufacturer, distributor, or wholesaler repurchases the inventory as provided for in proposed law. To determine what constitutes due cause for a manufacturer, wholesaler, or distributor to fail to renew a franchise, the following factors regarding the marine

dealer shall include whether the marine dealer:

- (1) Has made a material misrepresentation in applying for or acting under the franchise.
- (2) Has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against the marine dealer which has not been discharged within 30 days after the filing, is in default under the provisions of a security agreement in effect with the manufacturer, distributor, or wholesaler, or is in receivership.
- (3) Has engaged in an unfair business practice.
- (4) Has engaged in conduct which is injurious or detrimental to the public welfare.
- (5) Has failed to comply with any applicable provision of present law.
- (6) Has been convicted of a crime, the effect of which would be detrimental to the manufacturer, distributor, wholesaler, or dealership.
- (7) Has failed to operate in the normal course of business for 30 consecutive business days.
- (8) Has failed to comply with the terms of the marine dealership or franchise agreement.

Proposed law provides that if a manufacturer, wholesaler, or distributor does not intend to renew a franchise, the manufacturer, wholesaler, or distributor shall give the marine dealer 90 days written notice prior to the effective date by certified mail, return receipt requested, or commercial delivery service with verification of receipt.

Proposed law provides that within 30 days of the termination of the franchise, the manufacturer, distributor, or wholesaler shall repurchase that inventory previously purchased from them, including all new and unused marine products of the current and immediate prior model or program year and parts on hand and held by the marine dealer on the date of termination of the contract. The manufacturer, distributor, or wholesaler shall pay an amount equivalent to the cost actually paid by the marine dealer, including discounts given and rebates paid per unit for any new, unused, undamaged, and unaltered from original invoice and delivery, and complete marine product. The manufacturer, distributor, or wholesaler shall also pay an amount equal to the price paid by the marine dealer for any new, unused, and undamaged repair parts and accessories which are listed in the manufacturer's, distributor's, or wholesaler's prevailing parts list and are not more than 3 model years old, or in the case of parts inventory, that does not have a model year not more than 48 months old.

Proposed law shall not require the repurchase from a marine dealer of:

- (1) Any repair part which has a limited storage life or is otherwise subject to deterioration.
- (2) Any single repair part which is priced as a set of 2 or more items.

- (3) Any repair part which, because of its condition, is not resalable as a new part without repackaging or reconditioning.
- (4) Any inventory for which the marine dealer is unable to furnish evidence that is reasonably satisfactory to the manufacturer, distributor, or wholesaler of good title, free and clear of all claims, liens, and encumbrances.
- (5) Any inventory which the marine dealer desires to keep, provided that the marine dealer has a contractual right to do so.
- (6) Any marine product or product which is not in new, unused, undamaged, and complete condition.
- (7) Any repair parts which are not in new, unused, and undamaged condition.
- (8) Any inventory which was ordered by the marine dealer on or after the date of receipt of the notification of termination of the franchise.
- (9) Any inventory which was acquired by the marine dealer from any source other than the manufacturer, distributor, or wholesaler.
- (10) Any marine product that has been altered substantially from original delivery.

Proposed law provides that if any manufacturer, distributor, or wholesaler fails or refuses to repurchase any inventory within 30 days after termination of the franchise and submission by the marine dealer to the manufacturer, distributor, or wholesaler, by certified mail, return receipt requested, or commercial delivery service with verification of receipt, of a final inventory of marine products and parts on hand, he shall be liable not only for the amounts provided in proposed law but also the marine dealer's reasonable attorney's fees, court costs, and interest on the amount due for such inventory computed at the legal interest rate from the 31st day after termination.

Proposed law provides that in the event of the death or incapacity of the marine dealer or the majority owner of a person operating as a marine dealer, the manufacturer, distributor, or wholesaler shall, at the option of the heirs if the marine dealer died intestate or the legatees or transferees under the terms of the deceased marine dealer's last will and testament if the marine dealer died testate, repurchase the inventory from the heirs, legatees, or transferees as if the manufacturer, distributor, or wholesaler had terminated the contract, and the inventory repurchase provisions of proposed law shall apply. The heirs or legatees shall have until the end of the contract term or one year from the date of the death of the marine dealer or majority owner of a person, whichever comes first, to exercise their option pursuant to proposed law; provided, however, that nothing in proposed law shall require the repurchase of inventory if the heirs, legatees, or transferees and the manufacturer, distributor, or wholesaler enter into a new franchise to operate the marine dealership.

(Adds. R.S. 32:1268.3; Repeals R.S. 32:1268.1(B))